

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Case No.: 2:16-cr-00374-APG-NJK

Plaintiff

**Order Granting Plaintiff's Motion in  
 Limine Regarding Umoren's Prior Specific  
 Acts**

v.

KING ISAAC UMOREN,

[ECF No. 212]

Defendant

Defendant King Isaac Umoren owned and operated tax preparation businesses. In this case,<sup>1</sup> the government alleges Umoren created false tax returns, stole money from the refunds generated by the false returns, and impersonated an FBI agent. The government now moves *in limine* to introduce impeachment evidence of specific acts by Umoren.

The government argues that if Umoren testifies, his character for truthfulness will be at issue. It claims that, as it alleged in *United States v. Umoren*, 2:19-cr-00064-APG-NJK, it has evidence of fraudulent, untruthful, and dishonest acts by Umoren underlying the fraud scheme alleged in that case. The government seeks to introduce that evidence under Federal Rule of Evidence 608(b)(1) to impeach Umoren should he testify. It argues this evidence is critical for the jury to properly evaluate Umoren's credibility given the contemporaneous nature of the alleged acts and their nexus with Umoren's operation of his business. It argues the evidence is not barred by Federal Rule of Evidence 403, given the limited nature of the government's inquiry on cross examination, the absence of extrinsic evidence, and the availability of a limiting instruction.

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<sup>1</sup> Additional charges against Umoren related to his tax preparation businesses are pending in *United States v. Umoren*, 2:19-cr-00064-APG-NJK.

1 Umoren responds that evidence of his alleged fraudulent conduct in the other case is  
2 irrelevant, as it has nothing to do with impersonating an FBI agent. Umoren argues the  
3 government's request to immediately try to impeach Umoren should he testify is improper. He  
4 therefore contends that the government's tactic would only confuse the jury on the facts at issue  
5 and deprive Umoren of his right to testify without fear that irrelevant charges against him will  
6 impact the outcome in this case. Umoren argues the evidence has little probative value, and it  
7 raises substantial risks including unfair prejudice and jury confusion. He argues the government  
8 should use facts from this case, not irrelevant evidence from a separate case, to impeach him.<sup>2</sup>

9 The government replies that evidence regarding Umoren's dishonesty is highly probative  
10 of his credibility regardless of whether it relates to impersonating an FBI agent. It argues the  
11 impeachment evidence is sufficiently distinct from the conduct underlying the charges in this  
12 case, such that there is a low risk of confusing the jury. The government relies on Federal Rule  
13 of Evidence 608, not 404(b), to argue the evidence is admissible as impeachment evidence, not  
14 substantive evidence.

15 Defendants place their credibility at issue when they testify. *See U.S. v. Reid*, 634 F.2d  
16 469, 473 (9<sup>th</sup> Cir. 1980). I may allow a party to inquire into specific instances of a witness's  
17 conduct on cross-examination if they are probative of the witness's character for truthfulness or  
18 untruthfulness. Fed. R. Evid. 608(b). Evidence of a witness's participation in fraudulent  
19 transactions, such as preparing false financial reports, is probative of truthfulness. *U.S. v.*  
20 *Jackson*, 882 F.2d 1444, 1446 (9<sup>th</sup> Cir. 1989).

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23 <sup>2</sup> Umoren also states, but does not argue why, the government's motion is premature. Because I  
grant the government's motion subject to revisiting it when Umoren decides whether to testify, I  
do not address this statement.

1 In *United States v. Umoren*, 2:19-cr-00064-APG-NJK, the government charged Umoren  
2 with wire fraud, aggravated identity theft, and money laundering related to the sale of one of his  
3 tax preparation businesses. The specific instances of fraudulent, untruthful, and dishonest acts  
4 by Umoren underlying the allegations in that case are probative of his character for truthfulness.  
5 While Umoren is correct that the specific instances in that case do not relate to impersonating an  
6 FBI agent, they are instances of fraudulent acts which the government may properly use to  
7 attempt to impeach him. *See Jackson*, 882 F.2d at 1448-49 (affirming trial court's admitting  
8 evidence of witness's misappropriating client funds for impeachment purposes under 608(b)).  
9 Any danger of unfair prejudice or confusion resulting from this evidence does not substantially  
10 outweigh its probative value, especially with the availability of a limiting instruction to the jury.  
11 My decision here is consistent with my earlier decision on the government's corollary motion in  
12 *United States v. Umoren*, 2:19-cr-00064-APG-NJK which sought an order *in limine* to be  
13 permitted to impeach Umoren with the facts underlying this case. *United States v. Umoren*, 2:19-  
14 cr-00064-APG-NJK, ECF No. 132 at 7-8.

15 Umoren's reliance on *United States v. Douglas*, 408 F.3d 922 (7<sup>th</sup> Cir. 2005) is  
16 misplaced. There, the defendant sought to impeach their own witness by inquiring into the  
17 witness's criminal history. *Id.* at 927. The Seventh Circuit reasoned that because the government  
18 did not call the witness and it could prove every element of its case without the witness's  
19 testimony, the witness's credibility was not at issue. *Id.* Therefore, any evidence introduced to  
20 impeach their credibility was irrelevant and inadmissible. *Id.* Here, however, Umoren's  
21 credibility will be at issue should he choose to testify, and specific instances probative of his  
22 untruthfulness will be admissible under Rule 608(b). I therefore grant the government's motion  
23 *in limine*, subject to revisiting it during trial at the time Umoren decides whether to testify.

1 I THEREFORE ORDER that the government's motion *in limine* (ECF No. 212) is  
2 **GRANTED.**

3 DATED this 3rd day of December, 2021.

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6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
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